



MONTGOMERY COUNTY ETHICS COMMISSION

Waiver 23-09-013
September 20, 2023

On September 11, 2023, the Department of Environmental Protection (DEP) requested a waiver of the prohibitions in 19A-14 of the ethics law and applicable regulations for the class of County employees involved in designing or implementing the Electronic Vehicle Purchasing Co-op Program (EVPC, or EV Group Buy). Consistent with the objectives of Resolution 18-974 Emergency Climate Mobilization (December 5, 2017) and as highlighted in the County's 2021 Climate Action Plan, the program is part of the County's strategy to reduce greenhouse gas (GHG) emissions by incentivizing residents and businesses to transition from fossil-fueled internal combustion engine (ICE) vehicles to plug-in electric vehicles (EVs). DEP submits that the seriousness of the climate emergency challenges the Montgomery County Government to take creative actions that the government traditionally has not taken in the past to expedite the adoption of technologies that reduce greenhouse gas emissions.

Specifically, the program involves promoting specific incentives and products offered by private automobile dealerships that would reduce costs for County residents and businesses wanting to lease or purchase an electric vehicle. The EVPC also includes an Electrified Dealers partnership component to educate and engage private auto dealers in the Program.

In 2022, following the completion of a short pilot phase of the EVPC, DEP requested an advisory opinion from the Commission to determine if Section 19A-14 of the County Ethics Law applied to the administration of the EVPC. On August 16, 2022, the Commission advised in AO22-08-014 that the prohibitions of 19A-14 and implementing regulations are implicated by certain aspects of the proposed EVPC and concluded that DEP would require statutory authority or a waiver of prohibitions to proceed.

In light of the Commission's advisory opinion, DEP applied for and was granted a conditional waiver (Waiver 22-10-016) by the Ethics Commission on October 4, 2022, for 12 months. Recognizing that the EVPC may need to evolve during implementation, the Ethics Commission directed DEP to reapply for a waiver if it intended to continue the program after October 4, 2023, and to seek approval from the Chief Administrative Officer (CAO) for any program changes in the meantime. DEP has now reapplied for a waiver representing that the EVPC continues to operate as described in the original ethics waiver. The DEP does not expect any changes to program requirements or implementation to be made.

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In the original application for a waiver, DEP defined program requirements and processes that address any perceived or actual circumstances covered by Section 19A-14. These elements remain unchanged. DEP believes that the EVPC program continues to meet the waiver standard described in Section 19A-8, namely that the County's best interests would be served by granting the waiver.

DEP submits that electric vehicles are a major potential source of emissions reductions in the County's Climate Action Plan; however, the additional up-front cost of EVs is a significant barrier to adoption for many residents. The EV Purchasing Co-op and Electrified Dealers Program aims to reduce the up-front costs of EVs and encourage more residents to transition to EVs sooner. With over 1,000 residents pledging to make their next vehicle electric, this program is tapping into a well of demand from the community for affordable EVs. This program will reduce costs for residents who want to purchase an EV, encourage them to act or act sooner to buy an EV, and result in fewer emissions of greenhouse gases and particulate matter, which will significantly benefit the general public. This program further helps the County because it does not require additional public expenditures for cash incentives, rebates, or vouchers, instead collectively amplifying incentives offered by private businesses.

Following the granting of the ethics waiver in October 2022, DEP sent official communications from the Acting Director to dealerships to announce the launch of a new phase of the EVPC and describe requirements to participate in the Electrified Dealer program and promote dealership incentives. To date, 24 dealership locations representing nine ownership groups are participating in the Electrified Dealer Program. Six dealerships have listed incentives or special offers on the EV Purchasing Co-op Dealership Incentive website.

In pertinent part, 19A-14 provides:

- a. Unless expressly authorized by regulation or as may be permitted under Section 19A-16, a public employee must not intentionally use the prestige of office for private gain or the gain of another. Performing usual and customary constituent services, without additional compensation, is not prohibited by this subsection.
- b. Unless expressly authorized by the Chief Administrative Officer, a person must not use an official County or agency title or insignia in connection with any private enterprise.
- c. A public employee must not use any County agency facility, property, or work time for personal use or for the use of another person, unless the use is:
 1. generally available to the public; or
 2. authorized by a County law, regulation, or administrative procedure.

COMCOR 19A.14.01 provides:

An employee must not use or permit the use of his or her Government position or title or any authority associated with his or her public office to endorse any product, service or enterprise except: a. In furtherance of statutory authority to promote products, services or enterprises; or b. As a result of documentation of compliance with agency requirements or standards or as the result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency's mission.

There are three requirements to be met in order for the Ethics Commission to issue a waiver pursuant to 19A-8 of the ethics law:

1. the best interests of the County would be served by granting the waiver;
2. the importance to the County of a public employee or class of employees performing official duties outweighs the actual or potential harm of any conflict of interest; and
3. granting the waiver will not give a public employee or class of employees an unfair economic advantage over other public employees or members of the public.

The Ethics Commission grants the requested waiver to the class of persons working on the EVPC, subject to certain conditions, detailed further below.

The Commission believes the request from the Director of the Department of Environmental Protection, as supported by the Chief Administrative Officer, demonstrates that the administration of Montgomery County believes that the EVPC is in the best interest of the County. The information provided in the request supports that determination, and the Commission concludes based on the request and the concurrence of the Chief Administrative Officer that the best interest of the County would be served by granting the waiver.

The request for a waiver outlines perceived ethics risks associated with the EVPC and then details the mitigating approach to each risk. In this regard, the EVPC administrators will ensure that all of the dealers will be offered the same opportunities. To ensure that the public will not perceive that the County favors particular dealers or their incentives, the EVPC administrators will make clear that the County does not endorse or guarantee any dealer representations or offers. As for the risk of personal benefit to County employees administering the EVPC, the waiver request stipulates that staff may not accept discounts not available to members of the public or, when personally purchasing a vehicle, identify themselves to dealers as being associated with the EVPC. The EVPC administrators must attest, if transacting business with

dealerships doing business in the County, that no benefit unavailable to the public or due to EVPC administration was advanced to the employee. With these measures in place, and with the additional conditions of the Commission below, the Commission concludes that the importance of County employees working on the EVPC program outweighs any actual or potential harm.

As the EVPC design is not for the benefit of County employees but for County residents and the environment, there is minimal risk of potential conflicts of interest. With the stipulations, conditions, and attestations with respect to purchases by EVPC administrators described in the waiver, the Commission is satisfied that steps have been taken to assure that no public employee or class of employee will receive an unfair economic advantage over other public employees or members of the public. Of course, it would be a misuse of the prestige of office if an employee were to leverage their County position to seek for themselves or others a price or benefit in purchasing a vehicle not generally available to program participants.

The request states: "as the program proceeds it may be necessary to adjust some of [the] elements in response to feedback from participating dealers and the public." Noting this, the Commission imposes the following conditions on the issuance of the waiver:

1. Any material change to the EVPC design must be approved by the Chief Administrative Officer.
2. Changes to the program are not covered by the waiver. The waiver is based on the facts presented to the Commission. The waiver does not extend to circumstances other than those identified in the request for a waiver.

To the extent the waiver request itself states that the EVPC will adjust, the Commission wants to be assured that material EVPC changes are approved by the Chief Administrative Officer. In this fashion, the Commission can be assured that the EVPC will continue to meet the requirement that it be in the "best interests of the County." Additionally, the waiver stipulates that it only covers the circumstances presented by the Department for a waiver. If changes to the program implicate the prohibitions of the ethics law, particularly 19A-14, a new waiver for that aspect of the program would need to be requested.

For the Commission:



Jennifer Collins, Acting Chair